

APR 24 1992

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

DALE FARRAR and PAT SMITH,
as Co-Administrators of the Estate of
Joseph D. Farrar, Deceased,

Petitioners,

versus

WILLIAM P. HOBBY, JR.,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED DECEMBER 16, 1991
CERTIORARI GRANTED FEBRUARY 24, 1992**

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSEPH DAVIS FARRAR, §
ET AL. § CA NO.
VS. § 75-H-987
CLARENCE D. CAIN, §
ET AL. §

RELEVANT DOCKET ENTRIES

6-13-75	1	Complaint filed. (6) summons issued.
6-20-75	2	Pltfs' FIRST AMENDED COMPLAINT adding Dale Lawson Farrar as Pltf. filed.
8-24-76	47	PLTF'S Second Amended Complaint filed.
9-13-76	48	Defts' Clarence D. Cain, Ruth Urmy, William P. Hobby, Jr., and Raymond W. Vowell's Amended Answer, filed.
5-19-78	76	Deft. William P. Hobby, Jr.'s MOTION for Summary Judgment, filed. M/D 7-12-78
7-3-78	83	Pltfs' RESPONSE to Defts' Various Motions for S/J, filed.
7-12-78	84	Defts' REPLY to Pltfs' Response to Defts' various Motions for Summary Judgment, filed.
1-24-79	96	(RO) ORDER, filed. Parties ntfid, mc.

1. Defts Cain, Hobby, Vowell, Gruver & Urmy Motions for Summary Judgment-GRANTED

2. Defts Cain, Hobby, Vowell, Gruver & Urmy DISMISSED w/prejudice.

3. Costs taxed against pltf.

2-20-79 97 NOTICE of APPEAL by Pltfs. to Order entered 1-24-79, filed.

3-22-79 99 FINAL JUDGMENT entered NUNC PRO TUNC effective 1-24-79, filed. (copy to parties) mac.

5-4-79 100 Pltfs.' MOTION for Relief from an Order and Judgment, filed.

5-16-79 (100) (RO) ORDER DENYING Motion of Pltfs. for Relief from an Order and Judgment, filed. P/n. mac

3-19-81 101 Certified copy of JUDGMENT by Court of Appeals Feb 23, 1981 and issued as MANDATE Mar 17, 1981, VACATED and REMANDED to District Court and further ORDERED that each party bear own costs on appeal, filed. tf

3-19-81 102 Certified copy of OPINION by Court of Appeals, filed. tf

9-21-81 111 Pltfs' BRIEF in Support of Opposition to Deft's Motion for Summary Judgment, filed. jh

12-8-81 112 (RO) MEMORANDUM & ORDER, filed. Parties ntfdaa Defts motions for summary judgment is DENIED.

4-12-82 121 (RO) ORDER, filed. Parties ntfd jh That defts' Motion f/Leave to Amend their answer is GRANTED. DD 4-13-82

4-30-82 122 Defts' Cain, Urmy, Hobby, Jr., Vowell & Gruver MOTION f/Leave to filed Amended Answer, filed. jh (unopposed) (w/amended answer) DD 5-5-82

8-16-82 130 Defts' SUGGESTION OF Death, filed. jh

8-2-83 157 (RO) PRETRIAL CONFERENCE, filed. jh

Appearances: Waggoner Carr & Ken Mackey f/pltfs. Rick Gary f/defts. Lt. Gov. Hobby; Deft A. J Hartel appear w/counsel J.C. Zbranek; James P. Allison f/defts Cain, Urmy & Gruner; Deft Judge Clarence Cain appear w/counsel Gilbert Low.

Co-Administrators Motion to Sub Co. Admin. as parties pltf. GRANTED.

Deft Raymond W. Vowell's Motion to Dismiss GRANTED. Jury Trial to begin Monday Aug. 15, 1983/10:00 am.

8-15-83 165 (RO) 1ST DAY JURY SELECTION & JURY TRIAL, filed. jh (Rptr: K. Howell)

Appearances: Waggoner Carr & Ken Mackey f/pltf; James Allison & Lewis Boyd f/defts Cain Urmy & Gruver;

Richard E. Gary, III f/deft Hobby; J.C. Zbranek f/deft Hartel.
 Jury selection & sworn. 1) Nancy Jane Fullilove 2) Yvonne M. Barkate 3) Charles Gelske, Jr. 4) James C. Ruth 5) Richard L. McMahon 6) Bedford Gottlieb 1st alternate) Hellen M. Ray 2nd alternate) Edward E. Kelley 3rd alternate William M. King. Jury removed. Pltf calls witnesses regarding documents in their possession.
 1) Bruce Stratten 2) Harvey Loving 3) Fred Clements-No Document-Witnesses released from subpoena & discharged as witnesses. 4) C.L. Buckole 5) Carol Clements-Documents tendered witnesses released subject to recall. Opening statements. Rule invoked. Pltf evidence begins 1) Deposition of Joseph Davis Farrar.

8-16-83 166 (RO) JURY TRIAL 2ND DAY, filed. jh Rptr: Kay Howell
 Appearances: Same as 1st day.
 Pltf's evidence continues: 1) Deposition of Joseph Farrar continues.

8-17-83 167 (RO) JURY TRIAL 3RD DAY, filed. jh (Rptr: Kay Howell)
 Appearances: Same as 1st day.
 Pltf's Evidence continues. 1) Deposition of Joseph Farrar continues. 2) Dale Farrar.

8-22-83 168 (RO) JURY TRIAL 4TH DAY, filed. jh (Rptr: Kay Howell)

Appearances: Same as 1st day.
 Pltf evidence continues. 2) Dale Farrar (testimony continues)

8-23-83 169 (RO) JURY TRIAL 5TH DAY, filed. jh (Rptr: Kay Howell)
 Appearances: Same as 1st day.
 Pltf's evidence continues. 2) Testimony of Dale Farra continues

8-24-83 170 (RO) JURY TRIAL 6TH DAY, filed. jh (Rptr: Kay Howell)
 Appearances: Same as 1st day.
 Pltf's evidence continues. 2) Dale Farra (testimony continues)

8-25-83 171 (RO) JURY TRIAL 7TH DAY, filed. jh (Rptr: Kay Howell)
 Appearances: Same as 1st day.
 Pltf's evidence continues. 2) Dale Farrar (testimony continues)

8-26-83 172 (RO) JURY TRIAL 8TH DAY, filed. jh (Rptr: Kay Howell)
 Appearances: Same as 1st Day.
 Pltf's evidence continues. 2) Dale Farrar (testimony continues)

8-29-83 173 (RO) JURY TRIAL 9TH DAY, filed. jh (Rptr: Kay Howell)
 Appearances: Same as 1st day
 Pltf's evidence continues. 3) Kay Bowen Collins, 4) Sebastian Mier

8-30-83 174 (RO) JURY TRIAL 10TH DAY, filed.
 jh (Rptr: Kay Howell)
 Appearances: Same as 1st day.
 Pltf's evidence continued. 5) Jack Hartel.
 6) Clarence Cain. Pltf's evidence
 continued. 5) Jack Hartel. 6) Clarence
 Cain

8-31-83 175 (RO) JURY TRIAL 11TH DAY, filed.
 jh(Rptr: Kay Howell)
 Appearances: Same as 1st Day.
 Pltf evidence continues. 7) Deposition of
 W.A Cowan, Jr. 8) Deposition of
 Raymond W. Vowell, 9) Lt. Govt.
 William P. Hobby.

9-1-83 176 (RO) MINUTES OF JURY TRIAL,
 filed.aa (Rptr Kay Howell)
 Appearances: Waggoner Carr and Ken
 E. Mackey f/pltf; James E. Gray, III
 f/deft Hobby. J.C. Zbranek for deft
 Hartel. Pltf's evidence continues. 10)
 depositions of John H. Lindel.

9-2-83 179 (RO) JURY TRIAL 13TH DAY, filed.
 jh (Rptr: Kay Howell)
 Appearances: Same as 1st day
 Pltf's evidence continues. 11) Edna
 Accardo, 12) Nell Harrison 13) Joyce
 Webster.

9-6-83 182 (RO) JURY TRIAL 14TH DAY, filed.
 jh (Rptr: Kay Howell)
 Appearances: Same as 1st day
 Pltf's evidence continues. 14) Ruth
 Urmy.

9-7-83 183 (RO) JURY TRIAL 15TH DAY, filed.
 jh (Rptr: Kay Howell)
 Appearances: Same as 1st day.
 Pltf's evidence continues. 14) Ruth
 Urmy (testimony continues) 15) Wayne
 Ball.

9-7-83 184 Pltfs' MOTION f/Leave to file pltfs'
 Third Amended Complaint, filed. jh
 (w/3rd amended complaint)

9-8-83 185 (RO) JURY TRIAL 16TH DAY, filed.
 (Rptr: Kay Howell)
 Appearances: Same as 1st day.
 Pltf's evidence continues. 15) Wayne
 Ball, 16) Lonnie Gruver

9-9-83 186 (RO) JURY TRIAL 17TH DAY, filed.
 jh (Rptr: Kay Howell)
 Appearances: Same as 1st day.
 Pltf's evidence continued. 16) Lonnie
 Gruver (Testimony Continues) 7) Dr.
 Tom McKinley. Pltf rests. Defts move
 f/directed verdict. DENIED.

9-12-83 189 (RO) JURY TRIAL 18TH DAY, filed.
 jh(Rptr: Kay Howell)
 Appearances: Same as 1st day.
 Deft's evidence begins. 1) Kay Diane
 Allen, 2) Dr. Len Dan Kerr, Jr., 3) Dr.
 Charles Houser. Alternate Juror,
 Edward Kelly, excused due to death in
 his family. 4) Clay Autry.

9-13-83 190 (RO) JURY TRIAL 19TH DAY, filed.
 jh (Rptr: Kay Howell)
 Appearances: Same as 1st day.

Deft's evidence continues. 5) Sonny Huey, 6) Debbie Gale Crum 7) Joy Whitman, 8) Martha Turner.

9-14-83 191 (RO) JURY TRIAL 20TH DAY, filed. jh(Rptr: Kay Howell)
Appearances: Same as 1st day.
Defts' evidence continues. 8) Martha Turner (testimony continues 9) Carol Ann Spanadeo 10) Ruby Kilpatrick 11) Linda Menchen.

9-15-83 192 (RO) JURY TRIAL 21ST DAY, filed. jh (Rptr: Kay Howell)
Appearances: Same as 1st day.
Defts' evidence continues. 12) Virginia Hvoball

9-16-83 193 (RO) JURY TRIAL 22ND DAY, filed.
(Rptr: Kay Howell)
Appearances: Same as 1st day.
Deft's evidence continues. 13) Wm. Keith Jaye, Jr.. 14) Shar Jaye Williams.

9-20-83 196 (RO) JURY TRIAL 23RD DAY, filed.
jh (Rptr: Kay Howell)
Appearances: Same as 1st day.
Deft's evidence continues. 15) John Hill, 16) W.G. Woods, Jr. 17) Deposition of Charlotte Fisher Harvey, 18)James B. Sterling 19) Deposition of Margaret Carol Gronberg Brown 20)Deposition of Robert Craven

9-21-83 198 (RO) JURY TRIAL 24TH DAY, filed.
jh (Rptr: Kay Howell)
Appearances: Same as 1st Day

Defts. evidence continues. 21) Dolph Briscoe.
Pltf cross of witness, out of order, 19)Deposition of Margaret Brown. 22)Deposition of Joseph Farrar, 23)Deposition of Michael Wayne Langford. 24) George Campbell.

9-22-83 202 (RO) JURY TRIAL 25TH DAY, filed.
jh (Rptr: Kay Howell)
Appearances: Same as 1st day.
Defts. rests. Pltf rebuttal begins. 1) Dr. Steve Hotze, 2)Lee McIlvain, 3) Wilma Lea McIlvain, 4)Inez Hardy, 5)Julius Knigge 6) Dr. Lovell B. Crain(by deposition). Pltf closes.
Deft closes. Recess to 9-23-83/1:30p.m.
Defts' move f/Directed Verdict.
DENIED.

9-23-83 204 (RO) JURY TRIAL 26TH DAY, filed.
jh (Rptr: Kay Howell)
Appearances: Same as 1st day.
Closing Arguments. Jury Charged. Jury moved. Pltf objects to charge DENIED.
Deft objects to charge DENIED. Pltf moves to not allow jury to take written charge to deliberations. DENIED. Jury returned & given final instructions.
Alternate jurors excused. Deliberations begin. Jury request to begin deliberation 9-24-83, 8:30 am.

9-24-83 205 (RO) JURY TRIAL, filed. jh (Rptr: Kay Howell)

Appearances: Same as 1st day
 Jury Deliberations begin
 9-24-83 207 Pltfs' THIRD AMENDED
 COMPLAINT, filed. jh
 9-25-83 209 (RO) JURY TRIAL, filed. jh (Rptr: Kay
 Howell)
 Appearances: Same as 1st day.
 Jury Deliberations resume. Jury returns
 w/verdict in favor of deft.
 9-25-83 210 SPECIAL INTERROGS' to the Jury,
 filed. jh
 10-7-83 218 Pltfs' MOTION FOR JUDGMENT,
 filed. jh
 M/D 10-24-83 by clerk
 11-10-83 222 (RO) JUDGMENT, filed. Parties ntfdaa
 Dkt'd 11-15-83
 Pltf's take nothing and action dismissed
 on the merits and parties bear their own
 costs.
 12-2-83 223 Pltf's MOTION For NEW TRIAL, filed.
 M/D 1/16/83 Dkt'd 12-28-83
 1-18-84 226 (RO) ORDER, filed. Par Dkt'd 1-19-84
 Pltfs' Motion for a New Trial is
 DENIED.
 2-14-84 227 Pltf NOTICE OF APPEAL from final
 judgment entered Nov 10, 1983 and
 Order denying Motion for New Trial
 entered Jan 18 1983, filed. (Fees not
 paid). bvb

1-13-85 239 Certified copy of JUDGMENT by Court
 of Appeals on Apr 8, 1985, and issued as
 MANDATE May 24, 1985,
 AFFIRMING IN PART, REVERSING
 IN PART and REMANDED to District
 Court and FURTHER ORDERED that
 each party bears its own costs on appeal,
 filed. mac
 7-19-85 241 Pltf's MOTION FOR HEARING on
 application for allowance of
 compensation and reimbursement of
 expenses, filed. dm
 M/D Aug 5, 1985 by clerk. dkt'd 7-10-85
 8-8-85 242 AJ Hartel, III's REPLY to pltfs' Motion
 for rehearing on application for
 allowance of compensation and
 reimbursement of expenses, filed. dm
 dkt'd 8-8-85
 8-19-85 243 Defts' RESPONSE IN OPPOSITION to
 pltfs' Motion for Hearing on application
 for allowance of compensation and
 reimbursement of expenses, filed. dm
 dkt'd 8-19-85
 12-10-85 244 Pltf's BRIEF in support of Pltfs final
 application for attys fees, filed. db
 12-10-85 245 FINAL APPLICATION for Allowance
 of Compensation and Reimbursement of
 Expenses, filed. db dkt'd 12-11-85
 12-19-85 246 Deft's RESPONSE IN OPPOSITION to
 pltfs' Final application for allowance of

compensation and reimbursement of expenses, filed. db dkt'd 12-19-85

1-21-86 247 SUPPLEMENTAL BRIEF, of deft Cain in opposition to pltfs' application for atty's fees, filed. db

1-31-86 248 MOTION OF Deft A.J. Hartel, III to introduce evidence prior to determination of atts' fees entitlement, filed. db M/D Feb 24, 1986 by clerk.

1-31-86 249 SUPPLEMENTAL BRIEF of deft A.J. Hartel, III, filed. db dkt'd 1-31-86

1-14-86 (LNH) PRETRIAL CONFERENCE: Mackey & Carr f/pltfs; Keller, Zbranck, Low f/defts

1. Court to determine issue of entitlement to atty's fees
2. Fees \$336,095
3. Motion f/atty's fees-under advisement. dkt'd 4-21-86

7-21-86 250 SUPPLEMENTAL BRIEF in support of Pltfs' Final Application f/Attys fees, filed. db dkt'd 7-21-86

9-2-86 251 Deft's MEMORANDUM OF POINTS & AUTHORITIES in Response to pltfs Supplemental Brief & final application f/attys fees, filed. db dkt'd 9-2-86

9-12-86 252 (LNH) ORDER, filed. parties ntfed. jgm Dktd 9-15-86

Defts are ordered to provide the court by Oct. 27, 1986, with an accounting

summary of the atty-hrs expended by year, allocated to the extent possible to individual defts and particular stages (First appeal, pre-trial, trial, and second appeal). Rates may be supplied at the defts' option.

9-22-86 253 Defts atty Gilbert Low's ACCOUNTING SUMMARY OF HOURS EXPENDED, filed. jgm

10-7-86 254 Defts' SUPPLEMENTAL MEMORANDUM IN RESPONSE to pltfs' supplemental brief and final application for attys fees, filed. jgm

10-23-86 255 Defts' RESPONSE to the Court's Order requesting an accounting summary of atty hours expended 1. filed. jgm

11-4-86 256 Deft's MOTION requesting a Hearing on the issue of atty's fees, filed. db (Unopposed) dkt'd 11-5-86

11-12-86 257 RESPONSE of A.J. Hartel, III, filed. jgm

1-20-87 258 TECHNICAL AMENDMENTS TO FINAL APPLICATION FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES, filed. jgm Dktd 1-26-87

1-23-87 259 (LNH) HEARING ON ATTYS FEES, filed. jgm RPTR-Maruffi Appearances: Carr & Mackey f/pltf; Keller, Mattax & Zbranek f/defts. Pltf

application for attys fees granted
Dktd 2-3-87

1-30-87 260 (LNH) ORDER ON ATTYS FEES, filed. parties ntfd, jgm Pat Smith, Dale Farrar, and Dale Lawson are awarded attys' fees of \$280,000.00, expenses of \$27,932.00, and \$9,730.00 of prejudgment interest on the expenses (at 9% after Sept. 1983) as additional costs of court against William P. Hobby, Jr., plus interest at 5.75% per annum from Jan. 23, 1987; Pat Smith, Dale Farrar and Dale Lawson Farrar recover nothing of Clarence Cain, and Arthur Hartell, III.
Dktd 2-3-87

2-9-87 261 EXCERPT OF PROCEEDINGS (Closing arguments) before Judge O'Conor on Aug. 15, 1983 to Sept. 25, 1983, filed. jgm

2-9-87 262 Deft Hobby's MOTION FOR NEW TRIAL AND REHEARING, filed. jgm M/D Feb. 23, 1987 by clerk dktd 2-10-87

2-9-87 263 Deft Hobby's REQUEST FOR HEARING AND OPPORTUNITY TO SUPPLEMENT THE RECORD, filed. jgm
Dktd 2-10-87

2-10-87 264 Pltf's MOTION TO REFORM ORDER ON ATTY'S FEES, Filed. jgm M/D Feb. 23, 1987 by clerk

2-13-87 265 TRANSCRIPT OF PROCEEDINGS (judges Decision) before Judge Lynn Hughes on Jan. 23, 1987, filed. jgm

2-20-87 267 NOTICE, filed. jgm (LNH) parties ntfd On William Hobby's motion, a hearing will be held on Mar. 17, 1987 at 10:00 am. The briefing schedule is:
Feb. 20, 1987 Defts' memorandum
Mar. 6, 1987 Pltfs' response
Mar. 13, 1987 Defts' reply
Please send copies of all brief to Judge Hughes' chambers.

2-20-87 268 MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF Deft Hobby's Motion for new trial, filed. jgm
Dktd 2-23-87

3-6-87 269 Pltf's MEMORANDUM IN RESPONSE TO DEFT HOBBY'S MOTION FOR NEW TRIAL AND REHEARING, filed.
Dktd 3-10-87, cd.

3-13-87 270 Deft Hobby's RESPONSE TO MEMORANDUM IN RESPONSE TO DEFT HOBBY'S MOTION FOR NEW TRIAL AND HOBBY'S MOTION FOR REHEARING, filed.
Dktd 3-17-87, cd.

3-17-87 271 (LNH) MOTION HEARING minutes, filed. (Rptr-H. Chester)
Appearances: Carr & Mackey f/pltf; Cowan, Keller, Cherry & Zbranek f/deft.
Counsel to brief preclusion issue by

March 30th. Deft Motion on issue of attys fees-taken under consideration pending briefing schedule. Dktd 3-24-87, cd.

3-17-87 272 EXHIBIT LIST of movant Hobby, filed. Dktd 3-24-87, cd.

3-20-87 273 TRANSCRIPT of Hearing before Judge Hughes on 3-17-87, filed. Dktd 3-24-87, cd.

3-30-87 274 Pltfs' MEMORANDUM REGARDING THE DOCTRINES OF LAW OF THE CASE AND CLAIM PRECLUSION, filed. cd

3-30-87 275 Deft Hobby's SUPPLEMENTAL MEMORANDUM IN SUPPORT OF HOBBY'S MOTION FOR REHEARING, filed. cd

4-3-89 303 (LNH) ORDER, entered. bj parties ntfid The parties are invited by May 1, 1989, to supplement their brief in light of the United States Supreme Court's ruling in Texas Teachers Assoc. v. Garland School Dist., No. 87-1759 (Mar. 28, 1989).

5-1-89 304 Pltfs' Supplemental Brief to Their Memorandum in Response to Deft Hobby's Motion for New Trial and Rehearing, filed. bj

eed 5-2-89

5-1-89 305 Deft Hobby's Supplemental Memorandum of Points and Authorities

in Opposition to Pltfs' Application for Atty's fees, filed. bj

eed 5-2-89

7-17-89 306

PLAINTIFFS' REPLY
MEMORANDUM TO DEFENDANT
HOBBY'S SUPPLEMENTAL
MEMORANDUM, filed. eod 7-19-89

7-17-89 307

DEFENDANT HOBBY'S RESPONSE
TO PLAINTIFFS' REPLY
MEMORANDUM, filed. eod 7-19-89 cj

8-31-90 308

(LNH) ORDER DENYING
RECONSIDERATION OF ATTY'S
FEES., entered Parties ntfid. eod 8-31-90
hs

8-31-90 309

(LNH) MEMORANDUM ON ATTY'S
FEES, entered Parties ntfid.
Supplemental findings to those in the
record.

The mtn to reconsider will be denied. eod
8-31-90 hs

See Order for more detail.

9-21-90 310

Deft William P. Hobby, Jr.'s NOTICE
OF APPEAL from the court's order
denying reconsideration of attorney's
fees., filed. eod 9/25/90 jd

(Filed July 12, 1983)

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSEPH DAVIS FARRAR, §
and DALE LAWSON §
FARRAR §
§ CA. NO. 75-H-987

VS. §
§

CLARENCE D. CAIN, §
RUTH URMY, §
WILLIAM P. HOBBY, §
JR., RAYMOND W. §
VOWELL, LONNIE A. §
GRUVER, and §
ARTHUR J. HARTEL, §
III §

MOTION TO SUBSTITUTE
CO-ADMINISTRATORS AS PARTIES PLAINTIFF

TO THE HONORABLE UNITED STATES DISTRICT
COURT JUDGE:

Now comes Pat Smith and Dale Farrar, Co-Administrators of the Estate of Dr. Joseph D. Farrar, through their attorney Ken E. Mackey, and move this Court for an Order substituting them as Plaintiffs and providing for the continuance of this action; and in support of this Motion would show unto the Court as follows:

1. On February 20, 1983, Plaintiff Dr. Joseph D. Farrar died leaving a Last Will and Testament. The Will was duly admitted to probate in the Probate Court of Harris County. Said Will appointed Charles Erhardt, III as Executor, and, due to Mr. Erhardt's inability to act, a petition was filed in that Court to appoint Pat Smith and Dale Farrar, Petitioners herein, the Co-Administrators of that Estate. On May 10, 1983, Dale Farrar and Pat Smith were duly appointed the Co-Administrators of the Estate of Dr. Joseph D. Farrar, who thereupon commenced acting and are still acting in their capacities as Co-Administrators.

2. Prior to the death of Dr. Joseph D. Farrar, Plaintiff Dr. Joseph D. Farrar filed the above styled action against the above named Defendants. This lawsuit is an action for money damages arising from deprivation of Dr. Joseph D. Farrar's civil rights as guaranteed by the United States Constitution as well as for personal and property damage due to the Defendants wrongful tortious conduct. It is based upon the United States Constitution, the Civil Rights Acts of 1870 and 1871, 42 USC 1983, 28 USC 1343, as well as the Constitution and the laws of the State of Texas. Said cause or caused of action pursuant to Article 5545 T.R.C.S. and the laws of the State of Texas are not extinguished by Plaintiff's death but survive to and in favor of the heirs and legal representatives of the estate of the deceased Plaintiff.

3. Simultaneously with the filing of this Motion, Pat Smith and Dale Farrar, the Co-Administrators of the Estate of Dr. Joseph D. Farrar, suggested on the record the death of Dr. Joseph D. Farrar pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure.

4. This Motion is made and based upon the matters stated herein, the notice of Motion heretofore filed and served on all parties, as provided in Rule 4 and 25(a)(1) of the Federal Rules of Civil Procedure and on all the pleadings, papers, records and files in this action. Also incorporated by reference are: a) the affidavit of Dale Farrar marked as Exhibit "A", and; b) the Order Admitting Will to Probate and Authorizing Letters of Administration with Will Annexed marked as Exhibit "B".

5. Pursuant to Local Rule 15 counsel for Movants consulted by telephone with James P. Allison, attorney for Defendants Cain, Urmy and Gruver in this matter. Mr. Allison indicated that he may have an objection to this motion. In addition, counsel for movant attempted to reach Richard Gray and J. C. Zbranek, other opposing counsel in this matter, by telephone, but was unable to reach same.

WHEREFORE, Movants Pat Smith and Dale Farrar the Co-Administrators of the Estate of Dr. Joseph D. Farrar pray that this Court enter an Order substituting them as parties Plaintiff in the place and stead of Dr. Joseph D. Farrar.

Respectfully submitted,
HARRISON & JORDAN
 814 Leopard
 Corpus Christi, Texas
 78401
 (512) 883-8833

By: Ken E. Mackey

(Filed
 IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF TEXAS
 HOUSTON DIVISION)

JOSEPH DAVIS
 FARRAR AND DALE
 LAWSON FARRAR,
 PLAINTIFFS

vs.

CIVIL ACTION
 NO. 75-G-987

CLARENCE D. CAIN,
 RUTH URMY,
 WILLIAM
 P. HOBBY, JR.,
 LONNIE A. GRUVER,
 AND ARTHUR J.
 HARTELL, III
 DEFENDANTS

PLAINTIFFS' THIRD AMENDED COMPLAINT

I.

This is a civil action for money damages arising from deprivations, under color of law of the States of Texas, of rights, privileges, and immunities secured by the Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, the Civil Rights Acts of 1870 and 1871, 42 USC 1983, 28 USC 1343, the Constitution and laws of the State of Texas.

II.

The Court [has] jurisdiction of the action by virtue of 28 USC 1343, 28 USC 1392, 28 USC 1393, and 42 USC 1983.

III.

Plaintiff JOSEPH DAVIS FARRAR is a resident of Houston, Harris County, Texas. At all times material herein, he was a Director and Vice President of Dolen

Educational Foundation, operating a child care facility known as ARTESIA HALL in Liberty County, Texas.

Plaintiff DALE LAWSON FARRAR is a resident of Houston, Harris County, Texas. At all times material herein, he was an employee and official of Artesia Hall.

Defendant CLARENCE D. CAIN is a resident of Liberty, Liberty County, Texas, and is and was at the time of the acts complained of herein, District Judge of the 75th Judicial District of the State of Texas and may be served in the Liberty County Courthouse, Liberty, Texas.

Defendant WILLIAM P. HOBBY, JR., is a resident of Houston, Harris County, Texas, and is and was at the time of the acts committed in 1973 and complained of herein, Lieutenant Governor of the State of Texas and may be served either at his office and apartment in the State Capitol in Austin, Texas, in his Houston office at The Houston Post, 4747 Southwest Freeway, Houston, Texas, or at his residence at 1507 South Boulevard, Houston, Texas.

Defendant RUTH URSY is a resident of Houston, Harris County, Texas, and is and was at the time of the acts complained of herein, an employee of the State Department of Public Welfare of Texas in Houston and may be served at her residence at 1116 Stanford or at her office, 3137 Old Spanish Trail, both in Houston, Texas.

Defendant LONNIE ARNOLD GRUVER is a resident of Dayton, Liberty County, Texas, and was at the time of the acts complained of herein, an employee of the State Department of Public Welfare of Texas in the Houston area and may be served with citation at 751 North Cleveland Street, Dayton, Texas.

Defendant ARTHUR J. HARTELL, III, is a resident of Liberty, Liberty County, Texas, and is and was at the time of the acts complained of herein, County Attorney of Liberty County, Texas, and may be served either at his office in the Liberty County Courthouse, Liberty, Texas, or Room 292, 1923 Sam Houston Street, Liberty, Texas.

Plaintiffs herein are suing these Defendants, while they were acting under color of law, in their individual and not in their official capacities such as State District Judge, Lieutenant Governor of Texas and County Attorney of Liberty County (and the later not as a prosecutor), for money damages only. No injunctive relief is now herein sought, nor would such now serve any useful purpose.

IV.

The deprivations mentioned in Paragraph I above include, among others, deprivations of liberty and property without due process by means of malicious prosecution, false imprisonment, improper executive influence and interference in administrative decisions, improper judicial influence and interferences in administrative and executive decisions, and improper administrative decisions and acts, all under color of law, by said Defendants, acting individually and with each other and other persons hereinafter reflected and with persons unknown.

The objects of these deprivations were as follows:

A. To destroy the livelihood, reputation, and professional life of Plaintiff Joseph Davis Farrier;

B. To close Artesia Hall by any means possible including, but not limited to, destroying the reputation and professional life of both Plaintiff Joseph Davis Farrier and Plaintiff Dale Lawson Farrier.

C. To directly or indirectly prevent the enrollment of students from Artesia Hall, including Black Americans, in the Tarkington Independent School District;

D. To directly or indirectly remove from Liberty County, Texas, all students, black and white, present at Artesia Hall; and

E. To directly or indirectly eliminate and embarrass a strong potential Political candidate for his office in the State of Texas, Price Daniel, Jr.

V.

Beginning on or about July 1, 1971, and continuing up to or at least June 28, 1973, these Defendants, individually and severally, jointly and in concert, set about to do the following:

A. To deny a license to Aston Educational Foundation, Inc., or its successor, Dolen Educational Foundation, from the Texas Department of Public Welfare for Artesia Hall to operate as a child care facility;

B. To revoke such license when granted by the Texas Department of Public Welfare;

C. To indict Plaintiff Joseph Davis Farrar; and

D. To close Artesia Hall by whatever means available including indictment of Plaintiff Dale Lawson Farrar.

This course of conduct is reflected through the following acts and circumstances:

(1) On July 1, 1971, Ruth Urmy and Liberty County Attorney Arthur J. Hartel, III, met and discussed whether or not a Department of Public Welfare license application should be accepted from J.

D. Farrar and Artesia Hall. The County Attorney then recommended that the license application be accepted but that compliance with Department of Public Welfare standards should then be made impossible.

(2) On or about July 22, 1971, Ruth Urmy opposed a continuance of an injunctive hearing against Artesia Hall. Said continuance was agreed upon by representatives of the Department of Public Welfare and Dr. Farrar for the purpose of completing a licensing study on Artesia Hall.

(3) On or about July 24, 1971, Ruth Urmy had a telephone conversation with the County Attorney, Arthur J. Hartell, III, warning him of the potential agreed continuance. As of that date Ruth Urmy had been removed from any official responsibility for any of the Department of Public Welfare affairs concerning Artesia Hall.

(4) On or about July 27, 1971, Ruth Urmy wrote the legal department of the Department of public Welfare questioning the "purposes" clause of the original corporate owner of Artesia Hall, Aston Educational Foundation, even though she no longer was assigned any responsibility concerning Artesia Hall.

(5) On or about July 26, 1971, Judge Clarence D. Cain instructed Lonnie Arnold Gruver, a Liberty County Department of Public Welfare worker, to prepare a licensing study for Judge Cain personally. This instruction was given even though the Judge had no authority or jurisdiction over any facet of the licensing process and even though Lonnie Arnold Gruver was not then an officer of the Court in any respect. Although Lonnie Arnold Gruver was an employee of the Executive Branch of government and not the Judicial Branch, he likewise had not

Department of Public Welfare assigned responsibility for [any] licensing study of Artesia Hall.

(6) On November 22, 1971, Judge Cain insisted that the injunctive hearing go forward even though the issue was clearly moot because a Department of Public Welfare license to operate had been granted to Artesia Hall on November 19, 1971, a fact known to Judge Cain at the time. J. D. Farrar was represented at the hearing on November 22, 1971, by Price Daniels, Jr. as local counsel, and W. Kendall Baker, a Houston attorney.

(7) Soon after November 22, 1971, Judge Cain appointed Lonnie Arnold Gruver as a Liberty County Probation Officer.

(8) On or about February, 1972, Judge Cain communicated with Mr. Will G. Bond, then a member of the State Board of Public Welfare, and requested an investigation into the property of the licensing of Artesia Hall and the quality of the care given the children at Artesia Hall. There was at this time no cause or controversy pending before Judge Cain concerning Artesia Hall.

(9) On or about March 2, 1972, Judge Cain told Department of Public Welfare Investigator Jon Lindell that the only thing to be done with Artesia hall was to "wipe it out." There was at this time no case or controversy pending before Judge Cain concerning Artesia Hall.

(10) On or about December 7, 1972, the Foreman of the Liberty County October Term 1972 Grand Jury requested a Texas Department of Public Safety investigation of Artesia Hall. The Grand Jury had been empaneled by Judge Cain.

(11) On or about January, 1973, the Grand Jury of Liberty County received an investigative report from the Texas Department of Public Safety which disclosed no significant violation of law and failed to make any remarks concerning the death of an Artesia Hall student on November 14, 1972, Danna Hvoboll.

(12) On or about April, 1973, for reasons undisclosed by public record, the October Term Grand Jury was held over by Judge Cain.

(13) On or about May 13, 1973, the then held over Grand Jury requested approval of the Commissioner's Court of Liberty County, Texas, to retain C. Bruce Stratton, an attorney, as Special Prosecutor to assist in investigation of Artesia Hall.

(14) On or after May 13, 1973, C. Bruce Stratton, without authority [of] the Commissioner's Court, retained the services of a private investigating firm to assist in investigating Artesia Hall.

(15) On or about April 30, 1973, a meeting of the School Board of the Tarkington Independent School District was held wherein Dr. J. D. Farrar and his counsel presented the request of Artesia Hall to enroll students, including Black Americans, at schools operated by Tarkington Independent School District.

(16) On or about June 13, 1973, counsel for J. D. Farrar hand delivered a letter to all members of the School Board, including one W. E. Ferguson, strongly stating Dr. Farrar's request for teaching assistance at Artesia Hall. Said letter intimated legal action should the School Board deny assistance to Artesia Hall.

(17) On June 14, 1973, the holdover Grand Jury returned an indictment of J. D. Farrar, in Cause No. 11,371, for murder with malice of Danna Hvoboll. This indictment had no factual basis and stated no

offense under the laws of the State of Texas and was returned by a Grand Jury that contained the same W. E. Ferguson referred to in Paragraph V (16) above.

(18) On June 14, 1973, Judge Cain accepted return of this indictment well knowing his own history of personal animosity against J. D. Farrar as manifested to John Lindell, referred to in Paragraph V (9) above. Further, Judge Cain knew the indictment had no basis in law or fact.

(19) On June 15, 1973, J. D. Farrar was arrested and held without bond on the indictment previously returned.

(20) In June, 1973, Price Daniel, Jr., former counsel for J. D. Farrar in the original licensing suit and then Speaker of the House of Representatives of the State of Texas, resided in Liberty County, Texas and was a strong potential candidate for Governor of the State of Texas as were other high State officials named in this suit.

(21) After the indictment on June 14, 1973 and the arrest of J. D. Farrar on June 15, 1973, Artesia Hall continued to operate.

(22) On June 20, 1973, Lieutenant Governor William P. Hobby, Jr., met with Raymond W. Vowell, Commissioner of Public Welfare, and Jerome Chapman, Deputy commissioner, and demanded the closing of Artesia Hall.

(23) On June 20, 1973, without factual or legal basis and submitting only to political pressure, Raymond W. Vowell decided to begin proceedings to close Artesia Hall even though Raymond W. Vowell well knew that the investigation being conducted by agents of the Department of Public Welfare was

underway, not concluded but had failed to disclose any grounds for closing.

(24) On June 22, [1973], Lieutenant Governor Hobby, Governor Dolph Briscoe, and other State officials flew to Artesia Hall for what was highly publicized as an inspection of Artesia Hall.

(25) On June 22, 1973, Judge Cain accepted return of additional indictments against J. D. Farrar and Dale Lawson Farrar. Said indictments had no basis in fact.

(26) Thereafter, on June 22, 1973, Dale Lawson Farrar was arrested and held in the Liberty County jail on said indictments. An additional warrant was then outstanding for J. D. Farrar.

(27) On the night of June 22, 1973, Judge Cain signed a temporary order restraining Aston Educational Foundation, et al, from operating Artesia Hall and ordered its seizure by the Texas Department of Mental Health and Mental Retardation. This Ex Parte Order was granted without notice to J. D. Farrar and without the need for Ex Parte proceedings since the facts both before and after the closing showed no clear and present danger to students at Artesia Hall at that time, particularly since all, indictments concerned allegations of offense purportedly occurring in August, October, and November, 1972, and not later, a circumstance well known to Judge Cain at the time.

(28) Prior to a further hearing on June 28, 1973, Judge Cain advised counsel then appearing for J. D. Farrar, that he was going to order the continued closing of Artesia Hall regardless of what came out in the hearing. There had, to that point, been no adversary proceedings giving basis for Judge Cain's premature decision.

(29) On June 28, 1973, Judge Cain ordered the continued closing of Artesia Hall pending a hearing on a permanent injunction. The order recites that this action was agreed upon by counsel for all parties.

VI.

Notwithstanding that under the Constitution and Laws of the State of Texas, the Defendants were empowered and duly authorized to prevent or aid in preventing the denial of equal protection of the laws and Constitution of the United States, the Defendants, individually and severally, jointly, and in concert, wrongfully neglected to prevent the commission of wrongs, including malicious prosecution, against Plaintiff Joseph Davis Farrar and Plaintiff Dale Lawson Farrar.

VII.

The conduct of the Defendants included wilfully acting or omitting to act in concert, to maliciously and without due process close Artesia Hall, and to deprive the Plaintiff, Joseph Davis Farrar, of his right (a) to practice his chosen profession and livelihood, (b) to operate Artesia Hall, a child care facility licensed by the State of Texas, and (c) to improve the quality of Artesia Hall by having both white and black American students enrolled and taught in schools of the Tarkington School District. Said conduct of the Defendants also included the malicious prosecution of Plaintiff Joseph Davis Farrar on June 15, 1973, and when that act did not cause Artesia Hall to collapse, the Defendants proceeded to maliciously prosecute Plaintiff Dale Lawson Farrar on June 22, 1973, and to indict Plaintiff Joseph Davis Farrar on new charges along with Plaintiff Dale Lawson Farrar, all of these acts being in violation of the Fourth, Fifth, Sixth, and

Fourteenth Amendments of the Constitution of the United States.

VIII.

Plaintiffs allege that as a direct and proximate consequence of the illegal, wrongful, unconstitutional acts and omissions of the Defendants, both individually and acting together, both jointly and severally, as described in Paragraphs IV and V of this Complaint, they, the Plaintiffs have suffered humiliation, embarrassment, mental suffering, mental anguish, distress, public humiliation, ridicule, loss of property, and loss of liberty. Plaintiff Joseph Davis Farrar's income has dropped drastically and continues to be woefully low. Plaintiff Dale Lawson Farrar was unemployed for some nine months, was turned down by many prospective corporate employers, and was never sent out on an interview by the Texas Employment Commission, all because of his indictment. Plaintiffs have been required to spend substantial sums of money in legal and medical fees. Plaintiff Joseph Davis Farrar claims damages to the date of this suit in the amount of \$1,500,000.00 and \$10,000,000.00 exemplary damages against the Defendants, jointly and severally. Plaintiff Dale Lawson Farrar claims damages to the date of this suit in the amount of \$500,000.00 and \$5,000,000.00 exemplary damages against the Defendants, jointly and severally.

WHEREFORE, Plaintiff Joseph Davis Farrar respectfully prays that this Court enter Judgment for him and against the Defendants herein, while acting under color of law in their individual and not their official capacities, jointly and severally, in the total amount of ELEVEN MILLION FIVE HUNDRED [THOUSAND] DOLLARS (\$11,500,000.00),

including damages and exemplary damages, all costs of Court expended by this Plaintiff, and reasonable attorney's fees, together with whatever other relief to which he may show himself to be entitled.

Plaintiff Dale Lawson Farrar respectfully prays that this Court enter Judgment for him and against the Defendants herein, while acting under color of law in their individual and not their official capacities, jointly and severally, in the total amount of **FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS** (\$5,500,000.00), including damages and exemplary damages, all costs of Court expended by this Plaintiff, and reasonable attorney's fees, together with whatever other relief to which he may show himself to be entitled.

Respectfully submitted,

HARRISON & JORDAN
814 Leopard Street
Corpus Christi, Texas 78401
(512) 883-8833

(Filed 5/5/82)
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSEPH DAVIS FARRAR, §	
and DALE LAWSON §	CA NO.
FARRAR §	
	§ 75-H-987
VS. §	
CLARENCE D. CAIN, §	
RUTH URMY, §	
WILLIAM P. HOBBY, §	
JR., RAYMOND W. §	
VOWELL, LONNIE A. §	
GRUVER, and §	
ARTHUR J. HARTEL, §	
III §	

DEFENDANTS' AMENDED ANSWER

COME NOW Clarence D. Cain, Ruth Urmy, William P. Hobby, Jr., Raymond W. Vowell and Lonnie Gruver, defendants herein, and file this their Fourth Amended Answer and would respectfully show the following:

I.

Defendants deny the material allegations contained in paragraph I of Plaintiff's Second Amended Complaint, and specifically deny that said complaint states a cause of action cognizable under 42 U.S.C. §1983.

II.

Defendants deny the material allegations contained in paragraph II of Plaintiffs' Second Amended Complaint, and specifically deny that said complaint states a cause of action that is cognizable under the statutes referred to therein.

III.

Defendants do not have sufficient knowledge to admit or deny the allegations contained in paragraph II as such allegations pertain either to Plaintiffs or to other Defendants herein. Defendant Clarence D. Cain admits that he is a resident of Liberty, Liberty County, Texas, and is and was in 1973 Judge of the 75th Judicial District Court of the State of Texas; the Defendant William P. Hobby, Jr. admits that he is a resident of Houston, Harris County, Texas, and is and was in 1973 Lieutenant Governor of the State of Texas; the Defendant Raymond W. Vowell admits that he was a resident of Austin, Travis County, Texas, and was in 1973 a Commissioner of Public Welfare of the State of Texas; and Defendant Ruth Urmy admits that she is a resident of Houston, Harris County, Texas, and was in 1973 an employee of the State Department of Public Welfare. Except as admitted above, these Defendants deny the material allegations of paragraph III of Plaintiffs' Second Amended Complaint.

IV.

Defendants deny the material allegations of Paragraph IV of Plaintiffs' Second Amended Complaint.

V.

Defendants deny the material allegations of paragraph V of Plaintiffs' Second Amended Complaint as they pertain to these Defendants, and specifically deny any of these Defendants' actions or conduct with regard the subject matter of Plaintiffs' Second Amended Complaint were done in bad faith or with any malicious intent toward the Plaintiffs or any other person, and deny that they constitute, separately or when considered together, any deprivation of the rights, privileges, or immunities of any person secured by the Constitution or Laws of the United States.

VI.

Defendants deny the material allegations of paragraph VI of Plaintiffs' Second Amended Complaint.

VII.

Defendants deny the material allegations contained in paragraph VII of Plaintiffs' Second Amended Complaint.

VIII.

Defendants deny the material allegations contained in paragraph VIII of Plaintiffs' Second Amended Complaint, and specifically deny that either of the Plaintiffs is entitled to any of the relief sought therein.

FIRST DEFENSE

Defendants claim the immunity granted by the Eleventh Amendment to the Constitution of the United States and by the common law of the State of Texas to them as officials of the State of Texas.

SECOND DEFENSE

Plaintiffs' asserted cause of action is in whole or in part barred by the Texas one-year statute of limitations, article 5524, Vernon's Texas Civil Statutes, and by the Texas two-year statute of limitations, article 5526, Vernon's Texas Civil Statutes.

THIRD DEFENSE

Defendants specifically deny that they or any one of them subjected any person or cause any person to be subjected to the deprivation of any rights, privileges, or immunities secured by the Constitution or Laws of the United States of America. These Defendants have had as their sole motivation the enforcement of the laws of the State of Texas and particularly those having to do with the licensing of child care facilities and would show that at no time have they done any act that violated any rights of Plaintiffs' or gave rise to any cause of action in Plaintiffs' against them or either of them for damages, and that at all times the Defendants acted in good faith. Defendants Gruver, Hobby, Vowell and Urmy therefore are entitled to the defense of executive immunity in this suit because they acted reasonably and in good faith under the circumstances in accordance with the demand and responsibilities of their respective offices. Defendant Cain is therefore entitled to judgment herein because of the doctrine of judicial immunity.

FOURTH DEFENSE

Plaintiffs have alleged that they were deprived of liberty and property without due process, *inter alia*, because an order granting a temporary injunction was entered on June 28, 1973. There was an Agreed Order signed by counsel for all parties. Plaintiffs were then and are now bound by the actions taken by their

counsel and as a result have waived any right to bring this claim against these defendants. In the alternative, collateral estoppel precludes the litigation of this particular claim.

WHEREFORE, PREMISES CONSIDERED, these Defendants pray as they have heretofore prayed and further pray that upon final hearing and trial of this suit, and that they be granted such other and further relief to which they may show themselves justly entitled, and for which they may ever pray.

Respectfully submitted,

MARK WHITE
Attorney General of Texas